

State of Washington REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

File NR CS2-22701
WR Doc ID 4660585

Changed Place of Use

PRIORITY DATE
May 27, 1974

WATER RIGHT NUMBER
S2-22701

MAILING ADDRESS
BRUCE HILLE
PO BOX 653
ONALASKA 98570

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal or Diversion

WITHDRAWAL OR DIVERSION RATE
0.02

UNITS
CFS

ANNUAL QUANTITY (AF/YR)
0.3

Purpose

PURPOSE	WITHDRAWAL OR DIVERSION RATE			ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON- ADDITIVE	UNITS	ADDITIVE	NON-ADDITIVE	
Domestic single	0.02		CFS	0.3		01/01 - 12/31

REMARKS

Water use is intended as a backup domestic supply to an exempt well.

Source Location

COUNTY	WATERBODY	TRIBUTARY TO			WATER RESOURCE INVENTORY AREA		
Lewis	Unnamed spring	South Fork Newaukum River			23-Upper Chehalis		
SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Unnamed spring	017165013000	13N	01W	27	NWSE	46.580	-122.791

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

0171650130005

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

That portion of the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27, T. 13 N., R. 1 W.W.M., lying north of State Highway 508.

Proposed Works

The source of S2-22701 is a series of diffuse seeps from the hillside above the Hille property. The seeps drain into a stream which flows southward across property owned by Lavern Farrar and onto the Hille property. Water collects in a 6-inch diameter pipe buried beneath the stream bed. Water

flows via gravity feed to a tank. A submersible pump in the collection tank pumps to the pump house and through 1-inch diameter distribution lines to the house. The pump house and diversion is situated about 50 feet south of Remy Lane.

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
Started	Completed	In Full Use

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (gpm or cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Recorded water use data may be submitted via the Internet. To set up an Internet reporting account, contact the Southwest Regional Office. If you do not have Internet access, you can still submit hard copies by contacting the Southwest Regional Office for forms to submit your water use data.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Proof of Appropriation


The water right holder must file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the superseding permit. Elements of a proof inspection may include, as appropriate, the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated.

Therefore, I ORDER approval of Change Application No. CS2-22701, subject to existing rights and the provisions specified above.

Signed at Olympia, Washington, this 10th day of January 2012.


Michael J. Gallagher, Section Manager

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Mailing Addresses	Street Addresses
Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	Pollution Control Hearings Board 1111 Israel RD SW Ste 301 Tumwater, WA 98501
Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608	Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503

For additional information, visit the Environmental Hearings Office

Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature

Website: <http://www1.leg.wa.gov/CodeReviser>.

INVESTIGATOR'S REPORT

Tammy Hall, Department of Ecology

Water Right Control Number CS2-22701

BACKGROUND**Description and Purpose of Proposed Change**

On January 12, 2010, Debbie Hille, representing Bruce Hille, filed an *Application for Change of Water Right* to change the Place of Use for Surface Water Certificate S2-27701.

Surface Water Certificate (SWC) S2-27701, issued April 30, 1976, authorizes diversion of 0.02 cubic feet per second and 2.5 acre-feet (ac-ft) per year from an unnamed spring for domestic supply and stockwater.

See Attachment #1

Attributes of the Existing Water Right and Proposed Change

Table 1. Attributes of SWC S2-27701 and Proposed Change

	<i>Existing</i>	<i>Proposed</i>
Name	James Matthiesen	Bruce Hille
Priority Date	05/27/1974	
Change Application Date		01/12/2010
Instantaneous Rate	0.02 cfs	Same
Annual Quantity	2.5 ac-ft/yr	0.3 ac-ft/yr
Purpose(s) of Use	Multiple Domestic Supply Stockwater	Single Domestic Supply
Period of Use	Continuous	Same
Place(s) of Use	That portion of the S ½ SE ¼, Section 27, T. 13 N., R. 1 W.W.M., lying north of State Highway 508.	That portion of the NW ¼ SE ¼, Section 27, T. 13 N., R. 1 W.W.M., lying north of State Highway 508.

Table 2. Proposed Source of Diversion

<i>Source Name</i>	<i>Parcel</i>	<i>Twp</i>	<i>Rng</i>	<i>Sec</i>	<i>QQ Q</i>	<i>Latitude</i>	<i>Longitude</i>
Unnamed spring	017165013000	13N	01W	27	NW SE	46.580	-122.791

Table 3. Existing Source of Diversion

<i>Source Name</i>	<i>Parcel</i>	<i>Twp</i>	<i>Rng</i>	<i>Sec</i>	<i>QQ Q</i>	<i>Latitude</i>	<i>Longitude</i>
Unnamed spring	017165013000	13N	01W	27	NW SE	46.580	-122.791

The following is a list of requirements that must be met prior to authorizing the proposed change in SWC S2-22701.

Public Notice

The applicant published public notice for this project proposal in *The Chronicle* of Lewis County once a week for two consecutive weeks beginning August 11 and ending August 18, 2011. The Department of Ecology received no protests or letters of concern in response to this notice.

State Environmental Policy Act (SEPA)

A SEPA determination evaluates if a proposed withdrawal will cause significant adverse environmental impacts. A SEPA threshold determination is required for:

- 1) Surface water applications for more than 1 cubic feet per second (cfs). For agricultural irrigation, the threshold increases to 50 cfs, if the project isn't receiving public subsidies.
- 2) Groundwater applications requesting more than 2,250 gpm.
- 3) Projects with several water right applications where the combined withdrawals meet the conditions listed above.
- 4) Projects subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA).
- 5) Applications that are part of several exempt actions that collectively trigger SEPA under WAC 197-11-305.

This application does not meet any of these conditions and is categorically exempt from SEPA.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states a water right put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed, as long as it does not harm or injure other water rights.

INVESTIGATION

The material reviewed in support of this application included the following:

- The State Surface Water Codes, administrative rules, and policies.
- Department of Ecology's Water Right Tracking System (WRTS) database.
- Topographic and local area maps.
- Telephone interviews with Debbie Hille.
- Information submitted by the Applicant.
- Water Right Certificate S2-22701 enforcement file, Vicki Cline, Department of Ecology.
- Notes from a site visit on August 22, 2011.
- The WRIA 23 Watershed Plan.

Project Location and Site Description

The project site is situated along State Highway 508, near Onalaska, in Lewis County. The Hilles own five acres of property accessed off Remy Lane. Although they have a well as a primary source for their domestic supply needs, the Hilles also use water authorized by S2-22701 for backup emergency supply when their power goes out. The Hilles are the only people who use water from the spring.

Water has been in use on the property since 1985, by two previous owners. Because the Hille's are not in the authorized Place of Use for S2-22701, this may be considered a de facto change, or a change application submitted "after-the-fact".

See Attachment #1

History of Water Use

- SWC S2-22701 was issued to James Matthiesen on April 30, 1976. This certificate allowed diversion of 0.02 cfs and 2.5 ac-ft from a series of diffuse seeps north of the Matthiesen property. Water was collected in a stream which flowed southward across several parcels of property. This water supplied water to several residents north of State Highway 508. The Matthiesen farm was about 400 acres.
- In 1981, Patrick Roden purchased 300 acres of the Matthiesen farm and put in a well for their domestic needs. However, Mr. Roden continued to use the stream water for backup supply when the power was out. The Ostlunds, who also purchased a portion of the original Matthiesen farm, also used the spring water for their house.
- In 1985, Steve Russell purchased the property where the diversion for the water system is located. He used the water to supply his domestic needs. This property is north of Roden's property, outside of the original Place of Use of SWC S2-22701.
- In 2003, Carl Seidltz purchased the Russell property and used the water system to supply his domestic needs until 2005, when he drilled a well.
- Bruce and Debbie Hille purchased the Seidltz property in 2005, with the water system being fully functional. They began using for their domestic supply as a backup source.
- In 2009, Lavern Farrar, who owns property north the Hille's built an earthen berm in front of the culvert that runs under Remy Road. This prevented water from flowing onto the Hille property and through the distribution system, making it impossible for the Hille's to exercise S2-22701. After enforcement actions by the U.S. Army Corps of Engineers, Mr. Farrar removed the berm in early 2011.

Tentative Determination of Extent and Validity of Surface Water Certificate S2-22701

The Washington Supreme Court holds that when processing an application for change to a water right, Ecology is required to make a tentative determination of extent and validity of the claim or right. R.D. Merrill v. PCHB and Okanogan Wilderness League v. Town of Twisp. This is necessary to establish whether the claim or right is eligible for change.

SWC S2-22701 has been exercised continually since it was issued in 1976. Although the system served up to two homes the past, all in the original place of use have switched to exempt wells and no longer rely on this source.

Since 2005, the Hilles have used water from the springs mostly as a backup supply when electricity is out. No one else uses water from the water system. Based on their use over the past five-years, they likely use the authorized instantaneous rate of 0.02 cfs. However, their annual demand was probably no more than 0.3 ac-ft per year.

SWC S2-22701 also authorized stockwater as a purpose of use under this water right. This attribute of the original water right has not been exercised and therefore has been relinquished back to the state from non-use.

I tentatively determine SWC S2-22701 is eligible for change in amount of 0.02 cfs and 0.3 ac-ft per year. The remaining 2.2 ac-ft under this right has been relinquished back to the state for non-use without "sufficient cause" as defined by statute (Chapter 90.14 RCW).

Proposed Use

The propose of use will be Single Domestic Supply.

Determination of De Facto Change of Surface Water Right S2-22701

Before approving a change of the place of use under this right, current use must be evaluated and compared to what was intended under the original water right. Department of Ecology Policy 1120 allows Ecology to consider unauthorized use as beneficial use under a water right on a case-by-case basis. The current use can be considered a *de facto change* of the right if the fact pattern for historical and current water use is consistent with the intent of the original water right. In order to make this determination, other attributes of the right must have remained reasonably constant and must not constitute an enlargement of the right.

- **Point of Diversion**
The point of diversion and distribution works are in the same location as originally described in SWC S2-22701.
- **Season and purpose of use**
The purpose and season of use are the same.
- **Scope of right**
The original right allowed group domestic supply. The current use is consistent with the original Purpose of Use. Enlargement of the original water right has not occurred. The Hille's are the only people who currently use the water.

The Hilles use of water constitutes a de facto change in the Place of Use under SWC S2-22701. This change occurred in 1985 when the Russells purchased the property and begin using it for their domestic supply.

Other Rights Appurtenant to the Place of Use

The Hilles primarily use an exempt well to supply their domestic supply needs.

Hydrologic/Hydrogeologic Evaluation

The source of S2-22701 is a series of diffuse seeps from the hillside above the Hille property. The seeps drain into a stream which flows southward across property owned by Lavern Farrar and through a culvert, under Remy Lane, onto the Hille property. Water collects in a 6-inch diameter pipe buried beneath the stream bed. Water flows via gravity feed to a tank. A submersible pump in the collection tank pumps to the pump house and through 1-inch diameter distribution lines to the house. The pump house and diversion is situated about 50 feet south of Remy Lane. The pump typically can pump about 9 gpm, which is roughly 0.02 cfs.

Water not diverted and used on the Hille property flows southward through a drainage ditch, then westward along Highway 508 until it reaches the intersection with Gish Road. From there, water flows under Highway 508 and to the Neuwakum River.

At the time of the field examination on October 27, 2011, the stream on the Hille property was about three feet wide and six inches deep. The drainage ditch was choked with vegetation making it difficult to estimate how much water was flowing into the Neuwakum River.

The Hille residence is situated on a small bench along the hillside and the pump for the water system is topographically below the house. The area below the house is densely vegetated indicating the presence of diffuse seeps which discharge to the stream on the Hille property and eventually flowing into the Neuwakum River.

Impairment Considerations

Changing the Place of Use for this water right will not adversely impact surface water or area water right holders.

Consideration of Protests and Comments

No protests were filed against this application.

Conclusions

In accordance with Chapters 90.03 RCW, I find that:

- S2-22701 is in good standing and available for change.
- The proposed change in Place of Use will not impair existing rights.
- Approval of the requested changes will not enlarge the original right conveyed by S2-22701, subject to the provisions specified above.

RECOMMENDATIONS

Based on my investigation and conclusions, I recommend the change to S2-22701 be approved for the amount listed below. Approval of this application is subject to the provisions beginning on Page 2.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit. The water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- 0.02 cfs

- 0.3 ac-ft per year
- Domestic supply

Point of Diversion

- NW¼, SE¼, Section 27, Township 13 North, Range 1 W.W.M.

Place of Use

- As described on Page 1 of this Report of Examination.


Tammy Hall

1/16/2012
Date

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

